

\*\*Original Filed 1/10/2007\*\*

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

NATHANIEL BASOLA SOBAYO, et al.,

Plaintiffs,

v.

WASHINGTON MUTUAL BANK, et al. ,

Defendants.

Case Number C 06-02348 JF

ORDER<sup>1</sup> DENYING MOTION TO  
RECONSIDER OR VACATE  
JUDGMENT

[re: docket no. 20]

**I. BACKGROUND**

On November 1, 2006, the Court entered judgment for defendants Buckley Real Estate, Inc. and Sean C. Buckley ("the Buckley Defendants"). On November 6, 2006, Plaintiffs filed a motion to reconsider or vacate judgment. On December 20, 2006, the Buckley Defendants filed opposition to the motion. On December 28, 2006, defendant Washington Mutual joined the Buckley Defendants' opposition. On December 29, 2006, Defendant Dodie Gaines filed opposition to the motion. Plaintiffs filed an addendum to the motion on December 29, 2006.

**II. LEGAL STANDARD**

---

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 Rule 60(b) provides in relevant part as follows:

2 On motion and upon such terms as are just, the court may relieve a party or a  
 3 party's legal representative from a final judgment, order, or proceeding for the  
 4 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)  
 5 newly discovered evidence which by due diligence could not have been  
 6 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether  
 7 heretofore denominated intrinsic or extrinsic), misrepresentation, or other  
 8 misconduct of an adverse party; (4) the judgment is void; (5) the judgment has  
 9 been satisfied, released, or discharged, or a prior judgment upon which it is based  
 10 has been reversed or otherwise vacated, or it is no longer equitable that the  
 11 judgment should have prospective application; or (6) any other reason justifying  
 12 relief from the operation of the judgment.

13 Fed. R. Civ. P. 60(b). A Rule 60(b) motion must be made "within a reasonable time" and, with  
 14 respect to reasons (1), (2), and (3), cannot be made more than one year after the judgment, order,  
 15 or proceeding was entered or taken. *Id.* A Rule 60(b) motion does not affect the finality of a  
 16 judgment or suspend its operation. *Id.*

### 17 III. DISCUSSION

18 Plaintiffs seek relief from the judgment in favor of the Buckley Defendants in the form of  
 19 a continuance that would allow them to secure legal representation. Even assuming that Fed. R.  
 20 Civ. P. 60(b)(6) allows such relief, the Court concludes that it would not be appropriate in this  
 21 case. Plaintiffs filed the instant action nine months ago, and their efforts to secure legal  
 22 representation apparently have been unsuccessful. The Court dismissed the action with leave to  
 23 amend, but Plaintiffs failed to file an amended complaint within the prescribed time. The Court  
 24 concludes that the possibility that Plaintiffs will obtain legal representation in the future does not  
 25 justify relief from the judgment entered on November 1, 2006. Plaintiffs do not explain why they  
 26 expect to succeed on the merits. Accordingly, the Court will deny the motion.

27 Defendants Washington Mutual Bank and Dodie Gaines, against whom the action also  
 28 was dismissed on July 28, 2006, have asked the Court to enter judgment for them because  
 Plaintiffs failed to amend their complaint within the prescribed time. Plaintiffs object to the  
 proposed judgment on the same basis that they ask for relief from the judgment in favor of the  
 Buckley Defendants. For the same reasons that it concludes that it must deny the Rule 60(b)  
 motion, the Court concludes that it should not defer entry of judgment for the remaining  
 defendants. Accordingly, the Court will enter judgment for Defendants Washington Mutual

1 Bank and Dodie Gaines.

2 **IV. ORDER**

3 Good cause therefor appearing, IT IS HEREBY ORDERED that the motion to reconsider  
4 or vacate the judgment is DENIED. The clerk shall close the file.

5  
6 DATED: January 10, 2007.

7  
8   
9 JEREMY FOGEL  
10 United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Copies of this order have been served upon the following persons:

Mark J. Romeo                      romeolaw@msn.com

Michael Bruce Tannatt              michael.tannatt@wamu.net, stacey.elliott@wamu.net

Notice will be delivered by other means to:

Theresa M. Marchlewski  
Office of the General Counsel  
9200 Oakdale Ave., Seventh Floor  
Mail Stop N110701  
Chatsworth, CA 91311

Christopher E. Schumb  
The Law Offices of Christopher E. Schumb  
10 Almaden Blvd  
Suite 1250  
San Jose, CA 95113

Nathaniel Basola Sobayo  
1608 Hollenbeck Avenue  
Suite 1  
Sunnyvale, CA 94087-5403

Christopher Franz Wullemmin  
1608 Hollenbeck Avenue  
Apartment #1  
Sunnyvale, CA 94087-5403

Waltraud Wullemmin  
1608 Hollenbeck Avenue  
Apartment #1  
Sunnyvale, CA 94087-5403